



Case Report

1	Case Number	0473/12
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	12/12/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

This TVC depicts a Nissan Navara driving down a winding road. A seemingly disastrous scenario unfolds after the driver and passenger view a falling rocks sign with indeed rocks falling towards the vehicle. The driver swerves a couple of times narrowly missing any falling rocks in his path. After cheating disaster the two occupants of the Nissan Navara savor victory by listening to iconic Australian song. Upon approach to a look out where a tour bus has stopped the driver questions why the tour bus group are looking at their Nissan Navara. Cockily, the passenger says that it must be them however it ends up being a large rock that had landed in the tray of the Nissan Navara during the disastrous scenario earlier without the driver or passenger even knowing. The TVC show a slice of life in terms of the rock fall whilst adding humor to provide a payoff helping cement the vehicles positioning as Australia's most powerful tradie

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

I wouldn't think this would be acceptable for television, as it looks very dangerous depicting reckless driving with the ute going sideways, and doesn't exactly promote a safe driving image. I don't think it is appropriate, especially as the young men who these cars are targeted to may be easily influenced by this kind of driving. I feel that it should not be shown on TV. It looks to promote unsafe and reckless driving, and shows the car sideways which is very,

very dangerous.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

I refer to your letter dated 23 November 2012.

Your letter details a complaint, reference 0473/12 (the complaint) in relation to advertisements by Nissan Motor Co. (Australia) Pty. Ltd. (Nissan) that feature the Nissan Navara ST-X 550. The 60 second version of this advertisement was aired during the X-Factor final on Tuesday 20 November 2012, and as such our response focuses on the 60 second version (the advertisement)

In your letter you state that the complaint raises issues under Section 2 of the AANA Code of Ethics (AANA Code) and you ask that any response address any issues that might be regarded as falling broadly within section 2 of the AANA Code.

1. The complaint

The complaint focuses on the driving depicted in the advertisement, specifically in relation to the vehicle's attempts to avoid a series of large falling rocks tumbling from the cliff face above the road on which the vehicle is driving. The complainant claims that the advertisement 'shows the car skidding around and driving erratically on the road' and that '...it looks very dangerous depicting reckless driving with the ute going sideways, and doesn't exactly promote a safe driving image...it looks to promote unsafe and reckless driving, and shows the car sideways which is very, very dangerous.'

2. Nissan's response to the complaint

Nissan takes great care when developing television commercials to ensure that they comply with the AANA Code and Federal Chamber of Automotive Industries Code of Practice Relating to Advertising for Motor Vehicles (FCAI Code), and to ensure that the commercials do not encourage any form of unsafe, illegal or reckless activity (including unsafe, illegal or reckless driving). Nissan also takes great care to ensure that the advertisements produced do not present any vehicle being driven in a manner that undermines the intent of the FCAI Code. Nissan strongly believes that the advertisement complies with the FCAI Code.

Purpose of the Advertisement

The advertisement was produced as part of a series of new television advertisements for the Nissan Navara, designed to use humour and puffery to show the capabilities of the vehicle for the target market, which includes tradespeople, and males aged 35-54. This advertisement is designed to show in a light-hearted, humorous and exaggerated manner the performance capability of the

Nissan Navara ST-X, even when carrying a large load in the tray. The humour, is underpinned by the driver and passengers singing along to a famous pop song and the fact

that the driver and passenger are not even aware of the massive boulder that has landed in the back of the vehicle and drive along nonchalantly, assuming the passers-by are staring at them (as they call themselves, 'a couple of good looking roosters in a ute') rather than the vehicle itself.

Compliance with the AANA Code

Under the recent changes to the AANA Code, motor vehicle advertising must comply with both the AANA Code and FCAI Code. The complainant shows concern about alleged 'reckless' and 'dangerous' driving depicted in the advertisement. Relevantly, Section 2 of the AANA Code currently provides:

2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

Nissan submits that the advertisement does not depict any material contrary to prevailing community standards on health or safety. The complaint focuses on a section of the advertisement showing the driver, assisted by the passenger, avoiding a series of rocks tumbling down the adjacent cliff face into the path of the vehicle. The footage in the 60 second version of the advertisement includes the following:

- 1. at 9 seconds, a 'Falling Rocks' warning sign;*
- 2. at 11seconds, some smaller rocks rolling towards the road; and*
- 3. between 13 seconds and 25 seconds, a series of larger rocks, causing hazardous conditions for the vehicle.*

In the sequence identified at point 3 above, the driver manoeuvres the car to avoid the increasing number of rocks falling from the cliff. The size of the rocks continually increases, adding to the element of puffery and fantasy in the design of the advertisement.

In particular, it is clear that, at all times, the driver does only what is necessary to avoid the hazard on the road. He remains in control of the vehicle, and contrary to the complainant's assertion, the vehicle is not (nor is it depicted as) "sideways" at any time. During this sequence, the passenger audibly gives the driver instructions to assist the driver to avoid the hazards, advising him to watch out and to turn the wheel at certain times.

At no time does the vehicle reach or travel in excess of the speed limit for the road shown in the advertisement.

The sequence builds up to the climax of the advertisement where, around the 45 second mark, the "reveal" shows an enormous boulder tucked into the vehicle's tray- clearly unbeknownst to the vehicle's occupants. The obvious exaggeration in the size of the boulder, especially in circumstances where the occupants do not perceive its presence, creates a very unlikely scenario that is obviously meant to be interpreted as humorous and fantastical. The advertisement does not intend to depict a realistic outcome from such a driving hazard.

Finally, it is critical to note that the following safety precautions were taken when filming and producing the advertisement:

1. *the road along which the advertisement was shot was closed to the public for the duration of the filming;*
2. *the driver was a trained, professional stunt driver manoeuvring under challenging circumstances in a controlled environment (a closed road);*
3. *care was taken to ensure that the road markings that the driver crosses in the advertisement when avoiding the rocks is a broken line not an unbroken or double line;*
4. *a mix of foam 'rocks' being dropped (approximately 40% of rocks shown) in situ, along with post­ production computer generated images were used to depict the falling rocks throughout the advertisement. No actual rocks were used in the filming of the advertisement;*
5. *the large boulder visible around the 45 second mark is made from foam. This boulder was not shown as part of the falling rocks sequence. Rather, it was simply placed in the tray of the vehicle safely and was subsequently filmed out of sequence. The image of the boulder appearing in the rear window of the vehicle at the end of the falling rocks sequence is a purely computer generated image; and*
6. *the driver did only that which was necessary to avoid the rocks and no unnecessary exaggeration of driving technique was incorporated.*

The FCAI Code

In addition to the requirements under section 2.6 of the AANA Code above, the AANA Code imposes additional obligations on advertisers of motor vehicles. Section 3 of the AANA Code states:

3.2 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles.

When preparing the advertisement, Nissan carefully considered its obligations under the FCAI Code. Relevantly, section 2 of the FCAI Code provides:

"Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

a) Unsafe driving, including reckless and menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement".

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle];

(b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.

(c) Driving practices or other actions which would, if they were to take place on a road or road­ related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]

Nissan maintains that the advertisement, and the section of it complained about, does meet and fully discharge Nissan's obligations under section 2 of the FCAI Code. In addition to being filmed on a closed public road under controlled conditions, the footage of the Nissan Navara vehicle was captured with the specific requirements of sections 2(a), 2(b) and 2(c) of the FCAI Code in mind. At no point in the advertisement is the vehicle depicted driving above the acceptable speed limits for public roads in Australia, nor is any dangerous, reckless or otherwise illegal manoeuvring featured.

This complaint focused on section 2(a) of the FCAI Code as the complainant alleges the advertisement shows "unsafe driving". As discussed above in relation to the AANA Code, Nissan maintains that the only manoeuvring depicted was to avoid the obvious hazard associated with the various falling rocks as they appeared before the driver. In discharging Nissan's obligations under section 2(a) of the FCAI Code, the advertisement contains no unnecessary change in direction, nor does it depict the vehicle moving sideways. The vehicle always moves forward (and left/right as required) to avoid the falling rocks. Given that no other vehicles are present on the road, and bearing in mind that the advertisement was filmed at a time when the road was closed to public traffic, the manoeuvring to avoid the rocks did not place the vehicle occupants or any other road users in danger. The driving shown was entirely appropriate and proportionate to avoid the dangerous situation shown in the advertisement- it would have been unsafe for the driver not to swerve in the circumstances shown in the advertisement.

Similarly, the advertisement does not breach section 2(b) of the FCAI Code because it is driving well within the legal speed limits at all times during the advertisement. Even when the vehicle moves forward quickly, the acceleration and speed are all within the limits of the law.

Finally, Nissan maintains that the advertisement does not breach any Commonwealth, State or Territory road safety rules or traffic regulations. The 'Falling Rocks' sign is clearly depicted at the 9 second mark in the advertisement. Both passengers are restrained by their seatbelts during the falling rocks sequence. The vehicle only crosses over the road to avoid the danger of falling rocks, and does not create a hazard for itself or any other road users as the advertisement was filmed on a closed public road with no other cars to create an added hazard.

Finally, the FCAI Code specifically acknowledges that "advertisers may make legitimate use

of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles". Nissan submits that the advertisement clearly falls into this category. Given the light-hearted and exaggerated scenario depicted in the advertisement, we respectfully disagree with the complainant's assertion that "young men who these cars are targeted to may be easily influenced by this kind of driving". In addition, given that the driving shown was entirely appropriate and proportionate to the hazard of the falling rocks shown in the advertisement, we also strongly disagree with the complainant that the advertisement "looks to promote unsafe and reckless driving".

3. Summary

While Nissan acknowledges the complainant's concerns, it does not believe that the advertisement breaches the requirements set out in the FCAI Code or the AANA Code.

Nissan firmly believes that the advertisement in no way encourages or condones unsafe or reckless driving.

For the reasons above, we request that the complaint should be dismissed. We look forward to receiving the results of the Board's determination.

THE DETERMINATION

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code) and the Advertiser Code of Ethics (the Code).

To come within the FCAI Code, the material being considered must be an advertisement. The FCAI Code defines an advertisement as follows: "matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

The Board decided that the material in question was available in Australia or in a substantial section of Australia for payment or valuable consideration.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Nissan Navara ST-X 550 in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code the marketing communication is an advertisement as defined by the FCAI Code. The Board also considered whether the advertisement was for a motor vehicle. Motor vehicle is defined in the FCAI Code as meaning: "passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle".

The Board determined that the Toyota is a Motor vehicle as defined in the FCAI Code.

The Board determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

The Board noted the complainants' concerns that the advertisement depicts driving actions which are both dangerous and reckless.

The Board considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.'

The Board noted that the examples given in the FCAI Code for unsafe driving include "Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle."

The Board noted that the advertisement shows a Navara ST-X being driven along the bottom of a mountain road by a man with his friend in the ute also. He is singing to a song on the radio as large boulders and rocks start to fall down the mountain bounce and crashing in front of them. The Board noted that the vehicle is driven defensively along the road and the actions of the male drivers are of fear and concern at the prospect of being hit by a boulder.

The Board considered that the car is shown executes controlled weaving and maneuvering to avoid contact with the rocks. The Board agreed that were this driving sequence not in the context of avoiding the rocks then it is likely that the depicted driving might be considered to be unsafe or in breach of a law. However the Board considered that the context of driving to avoid a rock fall provided a context that justified the driving depicted.

The Board noted the Explanatory Notes to the FCAI Code which provide that 'advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.'

The Board considered that the advertisement clearly depicts the scenario in a fanciful way that is intended to appear exaggerated to the point of humorous. The Board therefore considered whether the clearly exaggerated and humorous advertisement undermined the safe driving message of the Code.

The Board considered that the vehicle is being driven in a manner that is controlled and swerving is only undertaken to avoid dangerous obstacles. The Board considered that the men are depicted in a manner that indicates that the rock avoidance is a dangerous situation and that the car is being in that manner only to avoid danger. The Board considered that the driving depicted was not unsafe and was not menacing or reckless. The board considered that the lighthearted humour of the men at the end of the advertisement is also depicted as a response to a dangerous situation and not as an endorsement of driving in an unsafe manner.

The Board considered that the advertisement as a whole depicted a fanciful and exaggerated situation and that the driving response in the advertisement was controlled and appropriate

for the situation. The Board considered that the advertisement did not depict unsafe driving or any driving that would breach a road safety law or traffic regulation and did not breach clause 2(a) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.